International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report submitted by Mexico under article 29, paragraph 1, of the Convention*

1. The Committee on Enforced Disappearances considered the report submitted by Mexico under article 29, paragraph 1, of the Convention (CED/C/MEX/1) at its 119th to 121st meetings (CED/C/SR.119–121), held on 2 and 3 February 2015. At its 133rd meeting, held on 11 February 2015, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the report submitted by Mexico under article 29, paragraph 1, of the Convention, which was drafted in accordance with the reporting guidelines, and the information contained therein. The Committee appreciates the constructive dialogue with the high-level delegation from the State party on the measures adopted by the latter to implement the provisions of the Convention.

3. The Committee thanks the State party for its written replies (CED/C/MEX/Q/1/Add.1) to the list of issues (CED/C/MEX/Q/1).

B. Positive aspects

4. The Committee welcomes the fact that the State party has ratified all the core United Nations human rights treaties and almost all the optional protocols thereto, as well as the Rome Statute of the International Criminal Court and the Inter-American Convention on Forced Disappearance of Persons.

5. The Committee also welcomes the measures adopted by the State party to address issues related to the Convention, including:

(a) The fact that the human rights recognized in international treaties to which Mexico is a party, including the Convention, have been given constitutional status;

(b) The fact that it has been recognized in article 29 of the Constitution that the prohibition of enforced disappearances shall not under any circumstances be subject to limitation or suspension;

* Adopted by the Committee at its eighth session (2–13 February 2015).

(c) The adoption of the Victims Act in 2013;

(d) The adoption of the new *Amparo* Act in 2013.

6. The Committee welcomes the launch of a web page containing systematized information on the international recommendations on human rights issued to the State party and encourages it to enhance knowledge of the recommendations and widen their dissemination.

7. The Committee notes with appreciation the existence of a dynamic civil society and a National Human Rights Commission that make significant contributions to monitoring the implementation of the Convention in the State party.

8. The Committee notes with satisfaction that the State party has extended an open invitation to all special procedures mandate holders of the Human Rights Council to visit Mexico. In this regard, the Committee welcomes the visit to Mexico made by the Working Group on Enforced or Involuntary Disappearances in 2011 and encourages the State party to ensure that all its recommendations (A/HRC/19/58/Add.2, paras. 79–113) are implemented.

9. The Committee recalls the exchange of correspondence with the State party regarding the mechanism provided for in article 33 of the Convention and trusts that the State party will consent to the visit taking place within a reasonable time frame.

C. Principal subjects of concern and recommendations

10. The Committee considers that the legislation in force, its implementation and the performance of some of the competent authorities are not in full compliance with the obligations under the Convention. The information received by the Committee reveals a situation of widespread disappearances in much of the State party's territory, many of which may be classified as enforced disappearances and some of which occurred after the Convention's entry into force. The grave case of the 43 students who were subjected to enforced disappearance in September 2014 in the State of Guerrero attests to the serious challenges the State party faces in the prevention, investigation and punishment of enforced disappearances and the search for disappeared persons. The Committee encourages the State party to implement its recommendations, which are made in a constructive spirit of cooperation, in order to ensure that legislation in force and its implementation by the federal, state and municipal authorities are in full compliance with the rights and obligations established in the Convention. The State party should use the fact that various legislative initiatives — including the possibility of adopting a general law on enforced disappearance — are currently under discussion as an opportunity to implement the recommendations made in these concluding observations.

General information

Urgent action procedure

11. The Committee welcomes the State party's cooperation in the framework of its urgent action procedure and takes note of the information provided in relation to the agencies involved in processing requests for urgent action and implementing the interim measures granted by the Committee (art. 30).

12. **The Committee urges the State party to continue to cooperate with the Committee within the framework of its urgent action procedure and to guarantee**

immediate processing and regular follow-up for all urgent actions and requests for interim protection measures transmitted by the Committee.

Individual and inter-State communications

13. The Committee notes that the State party has not yet recognized the competence of the Committee to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention. In this regard, it notes the information provided by the delegation to the effect that the possibility of recognizing the competence of the Committee under article 31 of the Convention (arts. 31 and 32) is still being considered.

14. **The Committee strongly encourages the State party to recognize the Committee's competence to receive and consider individual and inter-State communications under articles 31 and 32 of the Convention with a view to strengthening the framework for protection against enforced disappearances provided under the Convention.**

State party's federal structure

15. Although conscious of the challenges posed by the State party's federal structure, the Committee notes with concern that, both at the legislative level and in practice, the degree of compliance with the State party's obligations under the Convention varies from one jurisdiction to another. In this regard, the Committee notes the steps taken towards reforming the Constitution to make it easier for the Congress of the Union to enact a general law on enforced disappearance, among other things.

16. **Recalling article 41 of the Convention, the Committee recommends that the State party adopt the necessary measures to ensure that, at both the federal and state level, legislation and practice are in full compliance with the obligations set forth in the Convention. In this regard, it encourages the State party to adopt, as soon as possible, a general law that regulates all aspects of enforced disappearance covered by the Convention, particularly those relating to the prevention, investigation, prosecution and punishment of enforced disappearances, the search for disappeared persons and their legal situation. The Committee also recommends that the involvement of victims of enforced disappearance, civil society organizations and the National Human Rights Commission be guaranteed in all stages of the process leading to the adoption of this law.**

Definition and criminalization of enforced disappearance (arts. 1–7)

Register of persons subjected to enforced disappearance

17. The Committee notes with concern the lack of accurate statistical information on the number of persons subjected to enforced disappearance, which makes it impossible to ascertain the true scale of this scourge and difficult to adopt public policies which might render the fight against it more effective. Although it notes the adoption of the Act on the National Register of Missing and Disappeared Persons, the Committee is concerned about the lack of implementing regulations and the fact that the register does not include information which would make it possible to determine whether the person might have been subjected to enforced disappearance (arts. 1, 3, 12 and 24).

18. **The State party should take the steps necessary to establish a single nationwide register of disappeared persons which generates accurate statistics that can be used to devise comprehensive and coordinated public policies for the prevention, investigation, punishment and elimination of this abhorrent crime. The register should, as a minimum: (a) provide exhaustive and detailed information about all cases of**

disappeared persons, including information about the sex, age and nationality of the disappeared persons and the place and date of their disappearance; (b) include information that can be used to determine whether the case in question is one of enforced disappearance or a disappearance that occurred without any involvement of State agents; (c) facilitate the generation of statistical data on cases of enforced disappearances, including cases that have been clarified; and (d) contain information based on clear, consistent criteria and be updated on a regular basis. In this context, the State party should use the fact that the regulations implementing the Act on the National Register of Missing and Disappeared Persons are still pending adoption as an opportunity to ensure that the aforementioned criteria are met. It should also adopt the necessary measures to guarantee that the authorities responsible for entering the relevant data do so in a consistent and exhaustive manner, immediately after being informed of a disappearance.

The offence of enforced disappearance

19. The Committee notes with concern that some laws in the State party do not criminalize enforced disappearance and those that do establish differing penalties and definitions which are not always in line with the Convention (arts. 2, 4, 6, 7 and 8).

20. **The State party should adopt the necessary legislative measures to ensure, as quickly as possible, that enforced disappearance is defined as an autonomous offence, at both the federal and state levels, in line with the definition contained in article 2 of the Convention, and that the offence carries appropriate penalties which take account of its extreme seriousness. In the light of article 8 of the Convention, it should also guarantee that, in cases where a term of limitation is applicable to the offence of enforced disappearance, the term is of long duration and proportionate to the extreme seriousness of the offence and, taking into account its continuing nature, commences from the moment when the offence of enforced disappearance ceases.**

Criminal responsibility of superior officials

21. While taking note of existing initiatives in the Congress of the Union which provide that superior officials should be held criminally responsible, the Committee observes that the legislation in force is not in full compliance with the obligation arising under article 6, paragraph 1 (b), of the Convention (art. 6).

22. **The Committee recommends that the State party take the necessary legislative measures to ensure that both federal and state laws specifically provide for the criminal responsibility of superior officials, in accordance with article 6, paragraph 1 (b), of the Convention.**

Disappearances of migrants

23. The Committee is concerned by reports that there have been numerous cases of disappearances of migrants, including migrant children, and that these cases include cases of enforced disappearance. It also notes with concern the challenges that this dramatic situation poses for full observance of the rights to justice and truth embodied in the Convention, particularly since the relatives of the disappeared persons are not normally resident in the State party. In this regard, the Committee notes the information provided by the State party in relation to the investigation of disappearances of migrants and its efforts to locate them and provide support and protection. It also notes that the State party is working on the design of a transnational search and access to justice mechanism for such persons (arts. 1, 3, 12, 15 and 24).

24. **In conjunction with countries of origin and countries of destination, and with input from victims and civil society, the State party should redouble its efforts to prevent and investigate disappearances of migrants, to prosecute those responsible and to provide adequate protection for complainants, experts, witnesses and defence counsels. The transnational search and access to justice mechanism should guarantee: (a) that searches are conducted for disappeared migrants and that, if human remains are found, they are identified and returned; (b) that ante-mortem information is compiled and entered into the ante-mortem/post-mortem database; and (c) that the relatives of the disappeared persons, irrespective of where they reside, have the opportunity to obtain information and take part in the investigations and the search for the disappeared persons.**

Criminal responsibility and judicial cooperation in cases of enforced disappearance (arts. 8–15)

Military jurisdiction

25. Although it welcomes the 2014 reform of the Code of Military Justice, as a result of which federal and ordinary offences committed against civilians by military personnel are excluded from military jurisdiction, the Committee notes with concern that the Code still allows military jurisdiction for federal and ordinary offences, including cases of enforced disappearances committed by a military officer against another military officer. The Committee considers that, as a matter of principle, military courts do not provide the independence and impartiality required by the Convention to hear cases involving human rights violations such as enforced disappearances (art. 11).

26. **The Committee recommends that the State party adopt the necessary legislative measures to ensure that enforced disappearances committed by a military officer against another military officer are expressly excluded from military jurisdiction and can only be investigated and tried by the competent civil authorities.**

Investigations of cases of enforced disappearance

27. The Committee notes the information provided by the State party about the authorities responsible for conducting investigations when a disappearance occurs and the actions undertaken in such situations. It is pleased to learn that the Office of the Attorney General of the Republic is in the process of drafting a protocol for investigating cases of enforced disappearances, as requested by the National Council for Public Security. However, the Committee is concerned about the impunity surrounding the numerous cases of enforced disappearance reported, which is evidenced by the near zero level of convictions for the offence. The Committee is also concerned about reports that there are a number of obstacles which prevent investigations into cases of enforced disappearances from being conducted effectively. These include: (a) the fact that in certain cases the competent authorities have failed to initiate the investigation promptly, immediately after receiving information about a possible disappearance; and (b) the fact that the acts in question are classified as other offences in many of the cases in which there are grounds for believing that an offence of enforced disappearance might have been committed (art. 12).

28. **The State party should redouble its efforts to ensure that, where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, it undertakes a thorough and impartial investigation without delay, even if there has been no formal complaint, and that the perpetrators are prosecuted and, if found guilty, are punished in accordance with the grave nature of their acts. The State party should also:**

(a) Guarantee that, where there are reasons to believe that an offence of enforced disappearance has been committed, it undertakes effective investigations into any State officials or agencies that might have been involved, without delay, and exhausts all lines of inquiry;

(b) Encourage and facilitate the involvement of the relatives of the disappeared person in the investigations, without this conferring upon them any responsibility for providing the evidence necessary for the investigation;

(c) Guarantee effective coordination and cooperation between all agencies involved in the investigation and ensure that they have sufficient infrastructures and the technical, expert, financial and human resources to perform their functions expeditiously and effectively;

(d) Take the necessary measures to guarantee that law enforcement or security forces, whether civilian or military, whose members are suspected of having committed an offence of enforced disappearance do not take part in the investigation.

29. **The Committee encourages the State party to consider establishing within the Office of the Attorney General of the Republic a prosecution unit specializing in the investigation of cases of enforced disappearances which is endowed with sufficient resources — particularly specially trained staff — to address this criminal scourge from a national and transnational perspective, supports the investigative function, and coordinates its work with other relevant agencies, including, in particular, the Disappeared Persons Search Unit.**

Protection of persons who report and/or take part in the investigation of enforced disappearance

30. The Committee takes note of the existing mechanisms and legislation to ensure the protection of victims, witnesses and informants as well as the specific mechanism for the protection of human rights defenders and journalists. However, it is concerned by reports of the alleged persecution of and threats against the relatives of victims of enforced disappearance and human rights defenders working to assist victims, as well as by the lack of official information on such matters. The Committee is also concerned by reports that State agents have publicly discredited some of those persons and organizations (arts. 12 and 24).

31. **The State party should:**

(a) Redouble its efforts to ensure the prompt and effective implementation of the protection measures provided for by law with the aim of ensuring the effective protection of all persons referred to in article 12, paragraph 1, of the Convention against any possible ill-treatment or intimidation;

(b) Step up its efforts to prevent and punish any possible acts of intimidation and/or ill-treatment against human rights defenders working to combat enforced disappearances and to assist victims;

(c) Document cases of assaults, threats and intimidation in order to devise prevention and protection policies and to facilitate the effective investigation of such cases;

(d) Ensure in particular that all State agents refrain from making public statements that could discredit, stigmatize or endanger the relatives of disappeared persons or human rights defenders working to combat enforced disappearances and to assist victims.

Enforced disappearances during the period known as the "dirty war"

32. The Committee is concerned that, despite the passage of time, there has been no significant progress in the investigation and punishment of those responsible for enforced disappearances allegedly committed during the period known as the "dirty war" or in the search for the disappeared persons. Although it takes note of the difficulties faced by the State party in locating the relatives of all the persons whose disappearances were corroborated by the National Human Rights Commission in connection with recommendation 26/2001, the Committee is also concerned by the slow progress made in matters of reparation. Furthermore, the Committee takes note of the recent final report of the Truth Commission of the State of Guerrero and the delegation's comment that the Government will continue to work with the Commission (arts. 12 and 24).

33. **The State party should intensify its efforts to:**

(a) Ensure that all cases of enforced disappearance perpetrated during the period known as the "dirty war" are investigated promptly and that the alleged perpetrators are prosecuted and, if found guilty, punished in accordance with the seriousness of their acts;

(b) Locate and, in the event of death, identify, as quickly as possible, all persons subjected to enforced disappearance during that period;

(c) Guarantee the right to the truth about what actually happened;

(d) Guarantee that all victims, regardless of whether their cases have been corroborated by the National Human Rights Commission, receive adequate reparation that includes the means for their rehabilitation and takes account of gender issues.

Measures to prevent enforced disappearances (arts. 16–23)

Register of persons deprived of their liberty

34. The Committee takes note of the information provided by the State party regarding the information that should be entered in the Detention Registry System and the administrative arrest log. However, the Committee regrets that it has not received detailed information about the records kept in all places in which persons might be deprived of their liberty, such as migrant holding facilities or military detention centres (arts. 17 and 22).

35. **The State party should adopt the necessary measures to guarantee that:**

(a) All deprivations of liberty are entered in uniform registers and/or records which include, as a minimum, the information required under article 17, paragraph 3, of the Convention;

(b) All registers and/or records of persons deprived of liberty are filled out and updated promptly and accurately;

(c) All registers and/or records of persons deprived of liberty are subject to periodic checks and, in the event of irregularities, the officers responsible are disciplined.

Training on the Convention

36. The Committee takes note of the information provided by the State party concerning the human rights training given to public officials and notes with satisfaction that, in some cases, specific training in the area of enforced disappearance has been provided. However, the Committee notes that no specific, regular instruction is given to federal, state and

municipal officials on the relevant provisions of the Convention, as provided for in article 23 thereof (art. 23).

37. **The Committee recommends that the State party take the necessary measures to ensure that, at the federal, state and municipal levels, all military and civilian law enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody or treatment of persons deprived of their liberty, including judges, prosecutors and other officials responsible for the administration of justice, receive suitable training on a regular basis concerning the provisions of the Convention, in accordance with article 23 thereof.**

Measures of reparation and measures for the protection of children from enforced disappearance (arts. 24 and 25)

The right to receive reparation and prompt, fair and adequate compensation

38. The Committee welcomes the adoption of the Victims Act which, among other things, provides full reparation for victims of crimes and human rights violations and establishes that a person may be considered a victim regardless of whether the person responsible for the harm has been identified, apprehended or convicted or involved in any judicial or administrative proceeding. The Committee also welcomes the establishment of the Executive Commission for Victim Support to give effect to the broad rights of victims guaranteed under the law. However, the Committee is concerned that the Act has not yet been fully implemented, in particular at the state level (art. 24).

39. **In order to guarantee the right to reparation and to prompt, fair and adequate compensation for all persons who have suffered harm as a direct result of an enforced disappearance, the Committee recommends that the State party should:**

(a) Intensify its efforts to ensure that the Victims Act is fully implemented throughout the State party as soon as possible;

(b) Guarantee that access to reparation and compensation are not hindered by formal issues such as the failure to implement the Act at the state level;

(c) Take steps to ensure that all agencies that have information concerning a victim within the meaning of the Act arrange for the information about the person to be entered in the victims' register of the Executive Commission for Victim Support.

The search for disappeared persons

40. The Committee takes note of the information on the measures adopted with a view to searching for and locating disappeared persons and identifying their remains in the event of their death, as well as on the applicable legislation, in particular article 21 of the Victims Act. It also notes with satisfaction the establishment of the Specialized Immediate Search Unit in the Attorney General's Office of the State of Nuevo León. However, it notes with concern the numerous reports of the serious practical difficulties in tracing disappeared persons and identifying remains. The Committee is particularly concerned by reports that the search for disappeared persons is not always initiated immediately (art. 24).

41. **In the light of article 24, paragraph 3, of the Convention, the State party should redouble its efforts to search for, locate and release disappeared persons and, in the event of death, locate, respect and return their remains. In particular, it should:**

(a) Guarantee in practice that when news of a person's disappearance is received the search is initiated ex officio without delay in order to increase the chances of finding the person alive;

(b) Ensure that the search is conducted by the competent authorities with the involvement of the relatives of the person concerned;

(c) Strengthen the ante-mortem/post-mortem database, ensure that it is fully operational in all states as quickly as possible and guarantee that it contains the relevant information on all cases of disappeared persons, without exception, in strict conformity with the relevant protocols;

(d) Strengthen the genetic database of the Office of the Attorney General of the Republic to ensure that it contains information on all the persons that have disappeared in the State party;

(e) Guarantee effective coordination, cooperation and cross-referencing between the agencies responsible for searching for disappeared persons and for identifying their remains in the event of death, and ensure that they have the necessary economic, technical and human resources.

The legal situation of disappeared persons whose fate has not been clarified and that of their relatives

42. The Committee is concerned that most of the laws in force in the State party regarding the legal situation of disappeared persons whose fate has not been clarified and that of their relatives do not accurately reflect the specific nature of the phenomenon of enforced disappearance. In this connection, while the Committee notes with interest the commitment by the National Conference of Governors to promote the necessary legislative reforms in that area, it observes that thus far only two states, Coahuila and Querétaro, have defined absence due to disappearance as a legal concept (art. 24).

43. **The Committee recommends that the State party take the necessary steps to ensure that legislation throughout the State party establishes a procedure for obtaining a declaration of absence due to enforced disappearance in order to deal appropriately with the legal situation of disappeared persons whose fate has not been clarified and that of their families.**

Legislation concerning the removal of children

44. The Committee notes with concern that the legislation in force at both the federal and state level does not include provisions which specifically penalizes acts relating to the removal of children referred to in article 25, paragraph 1, of the Convention (art. 25).

45. **The Committee recommends that the State party adopt the necessary legislative measures to make the acts described in article 25, paragraph 1, of the Convention specific offences at both the federal and state level and that it establish penalties for such acts that are commensurate with their extreme gravity.**

D. Dissemination and follow-up

46. The Committee wishes to recall the obligations undertaken by States when ratifying the Convention and, in this connection, urges the State party to ensure that all the measures it adopts, irrespective of their nature or the authority from which they emanate, are in full accordance with the obligations it assumed when ratifying the Convention and other relevant international instruments. In particular, the Committee urges the State party to guarantee that effective investigations are conducted into all enforced disappearances and that the rights of victims as set forth in the Convention are fully upheld.

47. The Committee also wishes to emphasize the particularly cruel effect of enforced disappearances on the rights of women and children. Women who are subjected to enforced

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disappearance are particularly vulnerable to sexual and other forms of gender violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisals as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to multiple human rights violations, including the loss of their identity. The Committee therefore places special emphasis on the need for the State party to take account of gender perspectives and child-sensitive approaches when upholding the rights and fulfilling the obligations set out in the Convention.

48. The State party is encouraged to widely disseminate the Convention, its report submitted under article 29, paragraph 1, of the Convention, the written replies to the list of issues drawn up by the Committee and the present concluding observations in order to raise awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the State party and the general public. The Committee also encourages the State party to promote the participation of civil society, in particular organizations of relatives of victims, when implementing the present concluding observations.

49. In accordance with the Committee's rules of procedure, by 13 February 2016, at the latest, the State party should provide relevant information on its implementation of the Committee's recommendations, as contained in paragraphs 18, 24 and 41.

50. Under article 29, paragraph 4, of the Convention, the Committee also requests the State party to submit, no later than 13 February 2018, specific, up-to-date information on the implementation of all its recommendations, together with any other new information on the fulfilment of the obligations contained in the Convention. The document containing this information should be prepared in accordance with paragraph 39 of the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention (CED/C/2). The Committee encourages the State party to promote and facilitate the participation of civil society, in particular organizations of relatives of victims, in the preparation of this information.